IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

OP.No. 3575 of 1997(A)

PETITIONER:

D.RAJEEV,
S/O.DEVADAS,
AGED 30 YEARS,
RESIDING IN SUNIL BHAVAN,
THIRUPURAM,
P.O.NEYYATTINKARA.

BY ADV. SRI.G.S.REGHUNATH
SRI.M.RAMASWAMY

RESPONDENTS:
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1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY,
THIRUVANANTHAPURAM.

2. ASSISTANT SALES TAX COMMISSIONER,
KOTTAYAM.

3. PLANTATION CORPORATION OF KERALA LTD.
KOTTAYAM-686 004.

BY ADV. SRI.JOSEPH MARKOSE
SRI.S.SIRI JAGAN
SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

PETITIONER'S EXHIBITS:

EXT.P1- TRUE COPY OF AGREEMENT EXECUTED BETWEEN PETITIONER AND 3RD RESPONDENT DATED 21-2-97.

EXT.P2- TRUE PHOTO COPY OF LETTER FROM 3RD RESPONDENT DATED 9-12-1996 TO THE PETITIONER.

EXT.P3- TRUE COPY OF THE JUDGMENT IN TRC.NO.17/95 TO TRC.96/1996 BY THE HON'BLE HIGH COURT.

EXT.P4- TRUE PHOTO COPY OF AGREEMENT DATED 21-8-96 BETWEEN THE PETITIONER AND 3RD RESPONDENT.

EXT.P5- TRUE PHOTO COPY OF INVOICE DATED 3-9-96 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P6(SERIES)- TRUE PHOTO COPY OF INVOICES ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P7 (SERIES)- TRUE PHOTO COPY OF CASH RECEIPTS ISSUED BY THE 3RD RESPODNENT TO THE PETITIONER.

EXT.P8- TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER TO HTE 2ND AND 3RD RESPONDENTS ON 22-2-1997.

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.3575 of 1997-A

Dated this the 3rd day of October, 2007.

J U D G M E N T

H.L.Dattu, C.J.

An auction purchaser who has participated in the auction conducted by the 3rd respondent/Plantation Corporation of Kerala Ltd., Kottayam, is before this Court, seeking the following reliefs:

> *"a). That the respondents be directed by a writ of mandamus or other appropriate order or direction not to collect any sales tax from the petitioner or other person with whom the respondents enter into agreements for the sale of rubber trees;*
>
> *b). That the respondents be directed not to collect any sales tax mentioned in Exts.P1 and P4 from the petitioner and not to obstruct the petitioner from cutting and removing the rubber trees covered by Exhibit-P1 on the ground that sales tax has not been paid as stated in Exhibit-P1;*
>
> *c). Respondents be directed by writ of mandamus or other order to refund the amount of Rs.3,88,567/- collected by way of sales tax as per Exhibits-P5, P6 series and P7 series;*
>
> *d). That the respondents be directed to allow the petitioner to cut and remove the rubber trees covered by Exhibit-P1 without paying the sales tax stated in Exhibit-P1; and*
>
> *e). That the petitioner be allowed to recover from the respondent the entire costs of this Original Petition."*

(2). In our opinion, none of the reliefs sought for by the petitioner can be granted by this Court.

(3). Before auctioning the rubber trees, timber, and any forest produce, tender notifications would be issued by the Forest authorities/Corporations etc. The conditions would be stipulated in the tender notifications and those conditions requires to be complied with by the auction purchasers. One of the conditions in the tender issued by the third respondent was for payment of tax such as sales tax, forest development etc. The petitioner, who participated in the auction purchase is expected to pay the same, in view of the conditions stipulated in the tenders. If, for any reason, the petitioner was of the opinion that the conditions so imposed in the tender forms issued to him are either arbitrary, illegal or in violation of any Constitutional provisions, he would necessarily question the conditions so incorporated. That is not done in the present case. Therefore, in our opinion, none of the reliefs sought for by the petitioner in this original petition can be granted by us. Accordingly, original petition requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS